



August 31, 2018

Members of the Standing Committee on Industry,
Science and Technology

Dear Sir/Madam:

**The Canadian Association of Broadcasters
Submission to the Standing Committee on Industry, Science and Technology
August 30, 2018**

INTRODUCTION

This submission is made on behalf of the **Canadian Association of Broadcasters (CAB)** in respect of the section 92 review of the *Copyright Act* (“*The Act*”). The CAB takes the position that no amendments should be made to the *Copyright Act* that would harm local broadcasters, particularly radio stations, in Canada. The CAB believes the current legislation strikes the right balance between rights holders and local broadcasters and that the amendments being put forward by the music industry risk destabilizing local broadcasters and their role as a key source of local content and news for communities across the country.

BACKGROUND ON THE CAB

The CAB is the trade association representing the vast majority of private commercial radio and television broadcasters and discretionary services in Canada.

IMPORTANCE OF RADIO TO CANADIAN COMMUNITIES

Commercial radio is a major contributor to Canadian culture and an important source of local news and content to small and medium communities in Canada. Radio provides important day-to-day information, community engagement and affordable advertising for small and medium sized business and public alerting in case of major emergencies. The value of radio to Canadians comes from its three key characteristics: it is local, audio-based and available everywhere. These key characteristics manifest themselves in the

numerous ways that radio makes a difference in Canadians' lives and to the health of the music ecosystem in Canada including:

- Radio plays a key role in the provision of local news, weather, information, and community engagement with charitable and community organizations.
- While that role can be pivotal in times of emergency, the importance of local radio is also exemplified by its consistency, reliability and community focus. For example, CHBO-FM is a station in Humboldt, SK owned and operated by Golden West Broadcasting. Not only was that station critical in terms of local coverage during the tragic incident earlier this year, it continues to serve that community each and every day, with local news, information and community support through its Discover Humboldt website.
- Radio is the #1 source for discovering Canadian music and is the #1 source of funding for music development, promotion and export of Canadian talent.¹
- Radio supports the discovery of Canadian artists through airplay and promotion.
- Radio is one of the key methods local businesses use to market themselves.

SECTION 68.1 EXEMPTION FOR LOCAL RADIO REMAINS FAIR

Section 68.1 provides that radio stations pay Neighboring Rights royalties of \$100 on the first \$1.25 million in revenue. After the first \$1.25 million in revenue, the radio stations pay a percentage of advertising revenue at rates that are set by the Copyright Board of Canada. Overall, commercial radio pays out \$91 million in copyright tariffs on an annual basis.

The local radio sector is facing a number of competitive and financial challenges despite providing a critical service to Canadians, particularly through the provision of local news and information programming, emergency alerting and community engagement. Since 2013 commercial radio has experienced successive years of systemic revenue decline that has put significant upward pressure on operating costs, including local programming. Local radio risks suffering the same fate as small local newspapers which are fast becoming obsolete in our country.

Altering the existing balance in the Copyright Act would only compound what is already a very difficult operating environment as commercial radio strives to compete against global players for both listeners and advertising dollars, much of which is migrating to online platforms. Removing the exemption would add an additional \$8 million in costs to the radio sector which will severely hamper the ability of stations to create local programming and to hire creative talent.

¹ Canadian private radio expended \$47 million in Canadian Content Development (CCD) initiatives in 2015-16 : CRTC 2017 Communications Monitoring Report.

RECORD LABELS TARGETING LOCAL RADIO

In the context of this review of the *Copyright Act*, a group of stakeholders led by multi-national record labels and their Canadian affiliates have labelled their issues the “Value Gap”. These conglomerates paint a picture of economic hardship and a decline in their market, despite significant worldwide gains in streaming revenue, record profits to the labels in the last several years, and a self-proclaimed “cash bonanza” flowing from rapidly growing international and domestic streaming revenues.²

This claim also ignores the fact that any “gap” that was created was largely of their own making by their reluctance to adapt to new and changing business models and has nothing to do with commercial radio. Not only is the Canadian commercial radio sector not responsible for any perceived “value gap” in the Canadian music industry, private local radio provided a predictable source of funding to the Canadian music industry through both stable copyright payments and regulated Canadian Content Development funds. This allowed the labels to maintain their investments in Canadian artists in the late 90s and early 2000s at the height of disruption in the music industry.

Yet, the US owned labels have proposed the elimination of section 68.1, which will increase radio’s effective rates for neighbouring rights royalties that these same U.S. record labels are not even entitled to collect from U.S. local radio stations.

This has the potential to cause a serious negative impact on radio stations across Canada with additional copyright royalties amounting to hundreds of thousands of dollars for some station groups operating in small markets (e.g. Attraction Radio operates 6 FM stations in Victoriaville, Thetford Mines and Lac Mégantic region). Make no mistake, this will have a material impact on local programming and staffing from coast to coast to coast.

Changes to the copyright regime should only be considered after careful due diligence as to the flow of these royalties and who ultimately stands to benefit. US record labels and their Canadian affiliates do not specify how they intend to pass along the proposed increase in tariffs to

Canadian artists. Without this information, their proposal should be viewed as nothing but an unwarranted money grab on behalf of foreign-owned corporations at the expense of Canadian businesses.

In contrast to significant growth in the music industry, Canadian owned commercial radio stations are facing real operational issues. Not only are revenues not increasing, they

² Music Business Worldwide, Tim Ingham, *The 2017 Music Streaming Cash Bonanza: How the Major Labels Stack Up*, September 1, 2017 <<https://www.musicbusinessworldwide.com/the-2017-music-streaming-cash-bonanza-how-the-major-labels-stack-up/>>.

have declined for 4 years in a row.³ In contrast music label revenues increased more than 20% between 2015 and 2016.⁴

Given the important role of local radio in Canadian communities and the tangible contributions it already makes to the music ecosystem in Canada, the Committee should not remove this exemption.

THE HISTORY OF THE LOW REVENUE THRESHOLD

Neighbouring rights were introduced into the *Copyright Act* in 1997, despite the fact that the same rights are not part of the *Copyright Act* in the United States. A significant consequence of this change was the creation of the collective Re:Sound⁵ which was charged with collecting royalties for record labels and for performers. Their first focus was private radio broadcasters.

The government knew that the introduction of a new neighbouring rights tariff for radio broadcasters would represent a substantial financial shock for the radio industry. Accordingly, the neighbouring rights regime was included in the *Copyright Act* along with some special provisions for radio broadcasters, notably section 68.1. The Copyright Board certified the first neighbouring rights tariff in August of 1999, at a rate of 1.44% of advertising revenues.

Evidence from the Parliamentary Committee hearings at that time shows Susan Katz, then Director General of the Cultural Industries Branch at the Department of Canadian Heritage, stating:

Finally, special and transitional measures have been provided for radio broadcasters. For all private radio stations, the royalty in perpetuity on the first \$1.25 million of annual advertising revenues will be \$100 per year. The royalty payable on advertising revenues over \$1.25M will be phased in gradually.
[emphasis added]

In all prior instances, and for good reason, the proposed elimination of this provision was rejected by Parliament.

CLEAR GOVERNMENT INTENT TO KEEP SECTION 68.1

The labels incorrectly argue that Section 68.1 is a “subsidy” for the radio industry, that it was intended to be temporary. The government’s intention has always been clear; the *Copyright Act* was to include special and transitional measures for radio. The special

³ CRTC Statistical and Financial Summaries for Broadcasting Sector – 2017, Canada – AM/FM, All Languages.

⁴ Canada saw a 12.8% increase in music revenues in 2016, following a 9.4% increase in 2015. [Global Music Report 2017](http://www.nielsen.com/ca/en/insights/reports/2017/2016-music-canada-year-end-report.html). In addition, eight different Canadian artists had #1 albums in 2016. <http://www.nielsen.com/ca/en/insights/reports/2017/2016-music-canada-year-end-report.html>.

⁵ formerly called the Neighbouring Rights Collective of Canada or NRCC

measure was the \$100 threshold on the first \$1.25M in revenue **in perpetuity**. The transitional measure was the gradual phasing in of the tariff. These measures were incorporated into the *Copyright Act* to acknowledge the increasing copyright royalty burden faced by radio stations. This has proved to be an important balancing element for radio and has been particularly vital for both small market stations and smaller stations in larger markets, that continue to face real financial challenges. Indeed, small stations would suffer the most if the special measure were removed.

DEFINITION OF SOUND RECORDING SHOULD BE MAINTAINED

The labels are also asking to change the definition of “sound recording” in the Act to enable additional royalties. In essence, the labels are trying to extract an additional payment from broadcasters, distributors and digital platforms for the use of music in a television program that has already been paid for up front by the producers of that program. They are essentially trying to double dip. The current definition is carefully worded to reflect the contractual realities of the audiovisual production sector. This was confirmed by the Supreme Court of Canada in its 2012 Decision⁶. Any consideration of heaping new costs on an already fragile sector, or worse on a nascent digital sector, should be rejected. This would further diminish Canadian broadcasters’ ability to invest in Canadian productions by shifting more than \$50 million into the hands of foreign owned corporations, not Canadian artists.

USER RIGHTS ARE WORKING FOR RADIO BROADCASTERS

The last review of the *Copyright Act* addressed the fact that broadcasters were paying for temporary, technical and incidental uses of music that were ancillary to their broadcasts by including the following technologically progressive amendments:

- Section 29.24 – back-up copies are exempt from reproduction right liability
- Section 30.71 – purely technical copies are exempt from reproduction right liability
- Section 30.9 – radio stations are no longer liable for ephemeral reproductions

Reversing these amendments would not only be regressive and ignore the digital reality of the media sector but would also unduly penalize rights users in their attempts to innovate and provide new and exciting ways for Canadian consumers to engage with our cultural product.

CONCLUSION

For close to 40 years now commercial radio has been a key source of funding for the country’s four largest music funding agencies - FACTOR, MusicAction, Radio Starmaker Fund and Fonds Radiostar - which have provided critical support to Canadian music labels and artists to create, promote and export their music. Contrary to the allegations made by

⁶ Re:Sound v. Motion Picture Theatre Associations of Canada 2012 SCC 38

the U.S. multinational record labels, local radio and the various creator-focused initiatives it directly supports are one of the main reasons why Canada has developed such a vibrant and successful community of internationally successful music artists. Over and above its important role in the Canadian music ecosystem, radio also provides employment to a wide range of individuals in communities across Canada, enhancing creativity and bringing local content to people in diverse locations. The CAB urges the Committee to reject the requests made to change provisions in the Copyright Act that would harm the already fragile local broadcasting sector.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathalie Dorval".

Nathalie Dorval
Chair, Board of Directors
Canadian Association of Broadcasters

cc. CAB Board of Directors